

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. W.A. DREW)
EDMONDSON, in his capacity as ATTORNEY)
GENERAL OF THE STATE OF OKLAHOMA AND)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT, in his)
capacity as the TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF OKLAHOMA,)

Plaintiffs,)

v.)

Case No. 05-CV-00329
GKF-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,)
TYSON CHICKEN, INC., COBB-VANTRESS, INC.)
CAL-MAINE FOODS, INC., CAL-MAINE FARMS,)
INC., CARGILL, INC., CARGILL TURKEY)
PRODUCTION, LLC, GEORGE'S, INC.,)
GEORGE'S FARMS, INC., PETERSON FARMS,)
INC., SIMMONS FOODS, INC., and)
WILLOW BROOK FOODS, INC.)

Defendants.)

**REPLY TO STATE OF OKLAHOMA'S RESPONSE IN OPPOSITION
TO MOTION OF THE ARKANSAS FARM BUREAU FEDERATION
FOR LEAVE TO FILE AMICUS BRIEF**

The Arkansas Farm Bureau Federation ("ARFB") respectfully submits this reply to the State of Oklahoma's Response in Opposition to Motion of the Arkansas Farm Bureau Federation for Leave to File Amicus Brief. Plaintiffs have incorrectly stated that ARFB's motion is not timely, useful, or helpful to this Court beyond what the attorneys for other parties can provide. Plaintiffs also ignore the unique status of ARFB as an entity that can speak for all Arkansas farmers, including,

most importantly, those poultry producers in Arkansas who are not parties to the present case. Therefore, ARFB respectfully states that Plaintiffs' opposition should be overruled.

THE AMICUS MOTION OF ARFB IS TIMELY

Plaintiffs urge the Court to deny ARFB's Amicus Motion, claiming that it was not filed in a timely manner. Plaintiffs cite no law or rule whatsoever in support of this claim; rather they merely state that the motion was filed "at the eleventh hour." See p. 2 of *Plaintiffs' Response* (DKT #1572). The Court has held in this very case, however, that this Court will use Rule 29 of the Federal Rules of Appellate Procedure as a guide for deciding issues of timing. See, p. 2 of *Order* (DKT # 1446). Rule 29(e) states, "an amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed." Fed. R. App. P. 29(e). In this case, the defendants' responses in opposition to Plaintiffs' Motion for Preliminary Injunction were due and were submitted to this Court on February 12, 2008. ARFB submitted its motion on February 15, 2008, a mere three days after the principal briefs of the defendants were filed. Therefore, ARFB clearly complied with the time requirements of Rule 29(e), and ARFB's motion was timely.

THE AMICUS MOTION OF ARFB WILL BE USEFUL AND HELPFUL TO THE COURT BECAUSE IT PROVIDES THE PERSPECTIVE OF A GROUP THAT IS AFFECTED BY THE COMPLAINT BUT CURRENTLY UNREPRESENTED IN THIS CASE

As amicus curiae, ARFB would serve as "a friend of the court and not a friend of a party to the cause." See, *Leigh v. Engle*, 535 F.Supp. 418, at 420-422 (N.D. Ill.

1982). ARFB, like the defendants, opposes Plaintiffs' Motion for Preliminary Injunction. However, ARFB is not in lock-step with any of the Defendants. ARFB's purpose is to present the unique perspective of Arkansas producers, a group whose voice has not been heard but who will be affected by any ruling on Plaintiffs' complaint.

Further, unlike any other proposed amicus, ARFB's members farm each day in compliance with the laws and regulations of the States of Arkansas passed to implement and comply with valid interstate agreements between the States of Arkansas and Oklahoma. No other party or amicus can speak more clearly than ARFB about the effect of the present arguments by both the plaintiffs and defendants on Arkansas producers.

Plaintiffs argue that the defendants in this case are represented "by exceptional lawyers" and that "current counsel are fully capable of presenting the law and the facts to assist the Court in resolving the issues presented." *See* p. 2-3 of *Plaintiffs' Response* (DKT #1572), quoting *JPMorgan Chase Bank, N.A. v. Fletcher*, 2008 WL 73233. Indeed, counsel for the defendants are attorneys of high caliber and integrity, and they certainly will do an excellent job of representing the interests of the defendants. To reiterate, ARFB's members are not parties to this case and they stand to be dramatically affected by the outcome. The defendants cannot be expected to address the issues that are vital to producers. Therefore, ARFB believes that its amicus brief will be useful to the Court and will assist the

Court by providing the unique perspective of an interested but currently unrepresented group of citizens.

Dated: February 21, 2008

Respectfully submitted,

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**ATTORNEYS FOR AMICUS CURIAE
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, 2008, I electronically transmitted to the Court Clerk using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I hereby certify that on this 21st day of February, 2008, I served the same document via U.S. Postal Service on the following, who are not registered participants of the ECF System:

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